

GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the workmen and the management of Mary Calvert Holdsworth Memorial Hospital, Mission Hospital Road, Mysore.

Award of the Industrial Tribunal, Bangalore published.

Read the following papers :

(i) Letter No. 2626/66-67 dated 23rd March 1967, from Shri. A. Panchakshariah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE,
BANGALORE.

DATED 20TH MARCH 1967

Present

Sri A. Panchakshariah, B.A. (Hons.) LL.B.,—*Presiding Officer.*

I.D. No. 7 of 1966

First Party—

Workmen of Mary Calvert Holdsworth Memorial Hospital,
Mission Hospital Road, Mysore.

Vs.

Second Party—

Management of Mary Calvert Holdsworth Memorial Hospital,
Mission Hospital Road, Mysore.

Appearances

For the First Party.—Sri T. N. Nagaraj, Advocate, Mysore, on behalf of the Mysore Hospital Employees' Association, Mysore.

For the Second Party.—Sri P. S. Narayana Rao, Advocate, Mysore.

REFERENCE

G.O. No. LMA 602 LLD 65, Bangalore, dated 15th February 1966.

A W A R D

The dispute in the matter of wage scales, leave facilities, Provident Fund, Gratuity, etc., existing between the workmen and management of Mary Calvert Holdsworth Memorial Hospital, Mission Road, Mysore, has been referred by the Government of Mysore, under Section 10(1) (d) of the Industrial Disputes Act, 1947, to this tribunal for adjudication, by their Order No. LMA 602 LLD 65, dated 15th February 1966. The dispute relates to Class IV employees, tailors and carpenters. As soon as this Reference was received, it was registered as I.D. No. 7 of 1966 and notices were

taken out to the First Party to file its statement of claim. On 23rd April 1966 the First Party, represented by the President, Mysore Hospital Employees' Association, filed a claim statement in the course of which the various demands have been justified.

According to the claim statement, the First Party is composed of 75 workmen who are Class IV employees working in the Mary Calvert Holdsworth Memorial Hospital, Mysore. They are all members of the Hospital Employees' Association, Mysore. The Second Party is the management of the Mary Calvert Holdsworth Memorial Hospital, Mysore, running a hospital where in patients are treated for their ailments. There is both inpatient and out-patient treatment is given only on payments. The rates of payment are higher than those in the Government Hospital. On an average there will be about 200 out-patients and 300 inpatients always. Most of the out-patients are charged heavily as consultation and examination fees from Rs. 3 to Rs. 15 at a time. The First Party submits that the hospital is financially sound.

3. The pay scales, allowances and service conditions of the workmen employed in the hospital have never been fairly fixed either by means of a bipartite settlement or by a competent authority. The existing emoluments and conditions of services were unilaterally imposed on the workers by the management about a few years ago. The principles of salary fixation settled at the 15th Tripartite Indian Labour Conference have been ignored. It is submitted that due to the ever rising cost of living the pay scales adopted by the Second Party management is hopelessly below and as such very badly needs a revision. It is therefore prayed that all the Class IV employees, such as peons, Ward boys, etc., be fixed at Rs. 75—2—85—4—135, while the Tailors and Carpenters be fixed at Rs. 90—5—140—8—220. If the demand for D.A. is included as also the House Rent Allowance, the minimum which a Class IV servant must get will be Rs. 75 *plus* Rs. 40 *plus* Rs. 15 H.R.A., in all Rs. 130, while the Tailors should get Rs. 90 *plus* Rs. 40 *plus* Rs. 15, in all Rs. 145 per month.

4. Coming to the leave facilities, the First Party claims Casual leave for 15 days per year with wages, Earned leave of 33 days in a year with wages and maternity leave for 42 days per year with wages. In addition to the above leave, National and Festival Holidays as per Government declared holidays. The existing leave benefits are quite inadequate in relation to the employees' requirements of leave. No terminal benefits are in force for these employees and therefore the First Party claims that Provident fund should be allowed to all these employees at the rate of 8 per cent payable by both the employees and the management. The management should also introduce a Provident fund Scheme and in this behalf should frame rules of administration. Uniforms are demanded by each one of the Class IV employees every year. The demand is for 2 sets of uniforms every year, each set should consist of a pair of trousers,

one Bush shirt and a pair of foot-wear. So far as the Cycle Peon is concerned, Cycle Allowance at the rate of Rs. 10 per month should be given to him every month, and all these with effect from 1962. In the matter of Bonus, the I Party, claims at the rate of two months' total wages as bonus to every Class IV employee for the years of services from 1962 onwards and it is further contended that the management is capable of making this payment as bonus to the employees. Regarding introduction of Gratuity Scheme, it is quite inadequate and insufficient for the strenuous and long service which the employees have put in in the hospital. No pension scheme is in vogue in this hospital. Considering all these aspects, one month's salary as Gratuity for every year of service to each employee should be given. The I Party has also given a list of 11 people to whom Gratuity has to be paid. These are some of the demands which the I Party has put in its claim statement.

5. As against this, the II Party through the Medical Officer of the Hospital has filed a counter statement on 8th April 1966. It is contended by the II Party that all those who come for treatment to this hospital are charged, but only those who are capable of paying the charges are required to pay. There is no fixed rate of charges for treatment. The service rendered by the hospital will be only according to the paying capacity of the patients. The Hospital treats daily about 150 out-patients and has facilities for about 250 inpatients. Free consultations and examinations are provided for those who cannot pay the charges and it is only from those who are capable of paying consultation and examination fee at the rate of Rs. 3 to Rs. 15 is collected. The hospital has never been well off financially. It does not get regular aid for expenditure either from the Central Government or from the State Government. It has to depend entirely upon the collections by way of examination and consultation fee recovered from inpatients. To this hospital are attached senior staff members like doctors, technicians and they are all attached to the Church of South India who work for nominal salaries out of spirit of charity for rendering aid to this hospital. Considering that the hospital is a non-profit earning organisation depending mainly upon gifts and donations from the individuals and private organisations as also on income from consultation fee and inpatient charges, the pay and allowances and other benefits given to the hospital employees are adequate. These things will have to be determined on the industry-cum-region basis. The present rate of wages and allowances paid to the Class IV employees compare favourably with similar establishments in Mysore State. The wages and other emoluments paid in a Government institution cannot be taken as a guiding factor in fixing the wage scales of this institution under the management of the II Party. The claims put forward by the Class IV employees are therefore not justifiable. The claim put forward by the I Party is very exorbitant and is far beyond the capacity of the II Party to bear the financial burden. The wages now paid include D.A. and is adequate to cover the increase in the cost of living. The demand

of house Rent Allowance is also not justifiable because no other institution of a similar nature allows such a benefit to its employees. Regarding the leave facilities, annual leave at 21 days per year revised from 1st January 1966, Sick leave according to the length of service ranging from 15 to 90 days per year, maternity leave of one month every third year, are being given to the Class IV employees. The II Party submits that the leave facilities which are now Provided for are quite adequate considering the fact that the II Party is a hospital. Accumulation of leave as demanded is not justified in the present circumstances. Festival and National Holidays can be granted only as per the National and Festival Holidays Act. If the leave facilities asked for by the I Party are introduced, it would put the establishment into great jeopardy. Retirement benefit like Provident fund and Gratuity are in force in this institution. The present Provident Fund Rules are as from 1st April 1966 is 6½ per cent and the increase to 8 per cent is not possible in view of the difficult financial position of the II Party. So far as the scheme of Gratuity is concerned, this institution has a Gratuity Scheme in force. In addition to the Provident Fund and Gratuity it is impossible to have a Pension scheme. Regarding Bonus, the II Party submits that for the years 1962-63, 1963-64 and 1964-65 there was no available surplus. Minimum bonus under the Payment of Bonus Act is demanded in view of the exemptions under Sec. 32(5) (c) of the Payment of Bonus Act. The Gratuity Scheme which is in existence in the II Party, was introduced from the month of November 1964. All the 11 employees shown in the Annexure to the Reference, were superannuated on their completing 55 years of age. According to the terms of employment and Rules of conduct at the time of their superannuation, all amounts due to them under the Provident Fund and Gratuity, have been paid. Out of the eleven employees, the first 8 employees were superannuated after the Gratuity Scheme was introduced and hence they have been paid the gratuity amounts as per rules. The other three were superannuated long before the introduction of the Gratuity Scheme and therefore they are not entitled to payment of Gratuity. Since they were superannuated according to the service Rules and since 12 months prior notice was given to the first eight before superannuation, the question of payment of compensation does not arise.

6. The Hospital has no Watch and Ward Staff. Only persons are employed by rotation—two persons are posted for the night duty. Hence the question of providing boots to the night watchmen does not arise. The II Party also submits that this relief cannot be granted, if at all, with retrospective effect. At best these benefits can have effect only from the date of demand and not from 1st April 1962. On these ground the claims of I Party workmen have been refuted by the II Party.

7. A reply has been filed by the I Party denying the allegations in the counter statement of the II Party and reaffirming those in the claim statement.

8. In addition the points of dispute in the reference, one more issue was framed at the instance of the II Party and that is "Whether there is an industrial dispute within the meaning of the Industrial Disputes Act?" This issue was occasioned because of the objections taken by the II Party in para 17 of the counter statement. It is alleged that the hospital employees union is not the proper union to represent the cause of the workers of the II Party hospital, because most of the workers of the II Party had not become members on the date on which demands are made. In this connection, the I Party Union has examined its resident by name Sri Shivanna. His evidence is that he has been the President of the Union since 1964. This Union was started in the year 1964. Before placing the demands before the General Body, the General Body got them approved at its meeting dated 28th February 1965. Exhibit-W 191 is the Proceedings Book and Exhibit W-191(a) is the resolution passed by the General Body in this behalf. Exhibit W-192 is the Membership form. The entire class IV staff of the II Party were members of the Union on the date the demands were made. After the General Body meeting was over on 27th April 1965, W.W-11 as president of the Union, issued a demand notice to the II Party putting forth the demands before the II Party. After the demand notice was served on the II Party, conciliation proceedings were started. Exhibit W-194 is the reply of the II Party to the demand notice. From the evidence of this witness, therefore it is clear that the objection taken in para 17 of the II Party's counter statement is not tenable. It cannot be said that on the date the demand was made by the I Party, the Class IV Staff of the II Party had not enrolled themselves as members of the Hospital Employees' Union. My finding therefore on this additional issue is that in as much as all the Class IV employees had enrolled themselves as members of the I Party Union, there is an industrial dispute in this case.

9. Proceeding further to the other points of dispute, the I Party has examined 11 witnesses including the President of the I Party Union. The II Party has examined three witnesses including the Medical Officer of the Hospital. The II Party has also filed the audited Balance Sheets and Profit and Loss Accounts for the years 1962-63, 1963-64 and 1964-65. Exhibits M1, M2, M3, M4, M5 and M6 are the audited Balance Sheets and Profit and Loss Accounts for the three years. In addition to producing the audited Balance Sheets and Profit and Loss Accounts, the II Party has filed a few documents also. The I Party has also filed some documents. Before proceeding to consider the real issues in dispute, it is necessary for me to dispose of the issues in regard to which both sides conceded that there is no dispute in regard to those issues. During the course of arguments Sri P. S. Narayana Rao conceded in regard to the demand No. 4 that the provident fund contribution by each of the employees at the rate of 8 paise per rupee per month and an equal contribution by the management may be made. On his own agreement I have to hold that the Provident Fund contribution by each

of the employees at the rate of 8 paise per rupee per month will be substantiated by an equal contribution by the management with effect from the date of this award. This disposes off demand No. 4. Another point under which agreement was expressed is dispute No. 6. Dispute No. 6 relates to an extra allowance of Rs. 10 per month to the Cycle Peon of the hospital with effect from 1962. M.W. 3 in his evidence has told the tribunal that at present the Cycle Orderly is supplied with a cycle by the hospital and is paid a monthly allowance of Rs. 5 in addition to a free mid-day meal. Sri T. N. Nagaraj who represented the I Party, did not press the claim in this behalf and he was satisfied that the Cycle Orderly may be paid as at present Rs. 5 per month with a free mid-day meal. Sri P. S. Narayan Rao who represented the Management agreed that the Cycle Orderly should be paid his monthly allowance of Rs. 5 together with free mid-day meal. So then demand No. 6 is also disposed off.

10. Coming to demand No. 8, it is for gratuity at the rate of one month's full salary inclusive of D.A. for every year of service put in by each of the employees at their retirement. Demand No. 9 is for compensation and gratuity at the rate of one month's salary for the number of years of service put in by the following Ex-employees who are as many as 11 in number. It is the evidence of M.W. 3 that the scheme of gratuity has been introduced. Out of the 11 employees mentioned in demand No. 9, there were superannuated before the introduction of the gratuity scheme and those are Javarappa, Subbiah and Asirwadan. A sum of Rs. 710.17 has been paid to Javarappa as Provident fund and a receipt has been taken as per Exhibit M-19(a). Ex M-19 is the Provident Fund register. A sum of Rs. 624.19 is paid to Asirwadan as Provident fund as per Exhibit M-19(b) and his signature is taken in the Register Exhibit M-19. As per Exhibit M-22(c) a sum of Rs. 206.62 is paid to Subbiah as provident fund. Regarding the 8 employees, they have also been paid provident fund as per Exhibits M-23 to M-31 and they have also been paid their gratuity amount as per Exhibits M-32 to M-40. It is therefore clear that of the 11 persons listed in the order of Reference, in demand No. 9, the last 3 were superannuated even before these demands were raised and they had been paid their provident fund while the first 8 are paid not only their provident fund amounts but also their gratuity amounts. Therefore, demands Nos. 8 and 9 do not survive, because the scheme of gratuity has already been introduced and of the 11 persons 8 have been paid the gratuity, while the other 3 could not be paid because they had retired long before.

11. Regarding Demand No. 10, it was submitted by Sri P. S. Narayana Rao that the Hospital has not employed any night watchmen and therefore the question of supplying two pairs of boots to the night watchmen does not arise. Sri T. N. Nagaraj was unable to point out if the Second Party had employed night watchmen before these demands were put forth. It is only of late

one watchman is appointed and that too long after this Reference and the reason for the appointment of this watchman has been explained by M.W. 3 as due to a theft having taken place in the Nurses' Quarters. So then demand No. 10 does not survive.

12. Regarding Demand No. 5, viz., supply of two pairs of uniforms every year to each one of the Class IV employees, it is reported that the Dhobi and Carpenter are not required to wear any uniforms and as far as peons are concerned, they are required to wear uniforms and Sri P. S. Narayana Rao submitted that the peons are now being supplied with uniforms. Regarding rest of the Class IV employees, such as Cooks and those who work in the Compounding Rooms, are at present provided with protection clothing and therefore they need not wear any uniforms. So much so it is only the peons that will be entitled to two pairs of uniforms every year and not others. What those two pairs of uniforms will be, two coats, two pants and two caps made of white khadi, per worker per year.

13. Proceeding to Demand No. 7, the First Party workmen have claimed bonus at the rate of two months wages for every year with effect from 1962. In regard to the bonus it was contended by Sri P. S. Narayana Rao that under Section 32(5) (c) the Second Party being a Hospital, is exempted from the provisions of Payment of Bonus Act and as such the First Party workmen are not entitled to claim bonus; and particularly on and after the passing of the Bonus Act. For the years before passing of the Bonus Act, the workmen have not shown that there was any available surplus for claiming bonus from 1962. I fully agree with this argument and Sri T. N. Nagaraj was not able to point out any other provisions of law except stating that the Second Party is an institution established for the purpose of earning profit. Under Section 32(5) (c) of the Payment of Bonus Act, it is clear that the Act does not apply to certain classes of employees, viz., the employees of institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profits. It is contended by Sri T. N. Nagaraj that this Second Party institution is in the habit of getting accounts audited every year and preparing balance sheets and profit and loss accounts and in fact the Second Party has made profits throughout these years and therefore it must be deemed to be an institution run for earning profits. Under Section 32(5) (c) the bonus formula should obviously not apply to employees of such institutions as those of the Second Party, as it is not established with a view to make profits though it may have a surplus of income over expenditure. The one characteristic that distinguishes the Second Party from other institutions which may be mainly meant for earning profits, is that the excess of income over expenditure is not shared by anybody nor is it distributed as a dividend, but it is used for the purpose of the institution which is purely philanthropic in motive. Therefore I say that the Second Party institution cannot be said to be an institution meant for earning profits but an institution which is mainly meant for rendering service to humanity and

service to the poor and sick. In this connection I may also refer to a decision of the Supreme Court reported in 1966 (II) LLJ 764 and 765. That will give a sufficient answer to the First Party's demand regarding bonus from the year 1962. Demand No. 7 in regard to bonus therefore is negatived.

14. Coming to Demand No. 3, it mainly deals with leave facilities. The First Party workmen want 15 days Casual leave per year, 33 days earned leave per year, maternity leave of 42 days per year, and all Government holidays as paid holidays. During the course of the arguments it was agreed between Sri P. S. Narayana Rao and Sri T. N. Nagaraj Rao that the present leave Rules in this institution be abolished and those which are in existence in the K.R. Hospital, Mysore, be introduced. That, I think is a reasonable offer and acceptance. Accordingly, whatever leave facilities the employees of the K.R. Hospital, Mysore, are enjoying, the Class IV employees of the Second Party hospital will also be entitled to. The existing leave rules of the Second Party are quashed. The K.R. Hospital Employees are governed by the Mysore Civil Service Rules and the Class IV employees of the Second Party Hospital will also be governed by the said Mysore Civil Service Rules in the matter of leave facilities.

15. There remain only two demands. Demand No. 1 is in regard to scales of pay demanded by the First Party for these Class IV servants. To the category of 'A' class of employees, the First Party claims the following scales of pay, viz., Rs. 75—2—85—4—135. For the B category wherein tailors and carpenters are included, the First Party claims at the following scale, viz., Rs. 90—4—140—8—220. The evidence of M.W. 3 is that at present the time scale of pay of these various classes of employees is as per Ex. M-19. Class (1) which is a Dhobi Section, is started on a salary of Rs. 50—2½—75 with effect from 1st April 1963. Carpenters are started on a salary of Rs. 60—3—100. In regard to Cooks, Ward Boys, Sweepers, Scrubbers, Peons, Malis, etc., they start from Rs. 50 in the scale of Rs. 50—2½—75, from 1st April 1963. The Special Cook is started on Rs. 60—5—90, sewing women on 50—2½—75 and compounding room aids on 52—2½—75 from 1st April 1963. It is admitted by M.W. 3 that no D.A. and any other kind of allowance is paid to any of these workers. All these come under Class IV servants and this is so even according to the Mysore Government Notification, dated 23rd June 1961. The witnesses who are examined in this case on behalf of the First Party, are some of them the K.R. Hospital, Mysore. The evidence of W.W. 10 Sridharan who is a First Division Clerk in the K.R. Hospital, is that in Class IV, Cooks, Ward Attendants, Ward Boys, Ward Ayahs, Peons, Watchmen, Nurses, Maistries, Laskars, Sweepers, Dhobis, Barbers, Cleaners and water carriers are arranged. Their scales of pay are as per Notification Ex. W-188. As per Ex. W-188, scales of pay of these Class IV servants, as revised is Rs. 50—1—60. Ex. W-189 gives the Dearness Allowance for each one of these employees. So much so, the First Party workmen in this case calling themselves Class IV

servants, have not made out their case for scales of pay of Rs. 75—2—80—4—135 or 80—4—130—8—220. Compared with the employees of the Government Hospital, the starting salary and the increments and the maximum obtaining in the Second Party hospital are certainly more favourable than those obtaining in the K.R. Hospital. It would not be in the interest of the workers themselves to scrap off these scales. While the Class IV employees in the K.R. Hospital start only at Rs. 50 and get an increment of Re. 1 subject to a maximum of Rs. 60, the employee in the Second Party institution is started at Rs. 50 with annual increment of Rs. 2½ going up to Rs. 75. So far as Carpenters are concerned, they are started at Rs. 60 with an annual increment of Rs. 3 and go up to Rs. 100. In no case is the increment less than Rs. 2½ per year and in no case the maximum is less than Rs. 75, whereas the maximum which a Class IV employee gets in the K.R. Hospital is Rs. 60. The only grievance as far as I can see is that the Second Party is not paying any dearness allowance and house rent allowance. It is contended by M.W. 3 that the D.A. has been merged with the scales of pay with effect from 1st April 1963 and that is the reason for higher start of pay and for higher maximum. Even taking the present system and the total emoluments which a Class IV employee gets in the Second Party institution, it is not more than Rs. 75 per month. There is no doubt whatsoever that these Rs. 75 carry a Class IV employee no-where and particularly with the ever rising cost of living. Some relief is absolutely essential so far as the First Party workmen are concerned. During the course of her evidence M.W. 3 admitted that the management was prepared to pay Rs. 10 to Rs. 15 per worker extra either by way of H.R.A. or D.A., call it by whatever name. With regard to this offer it is no doubt true that it is a genuine offer but it is not at all commensurate with the difficulties which the First Party workmen are undergoing. It is no doubt true that the finances of this institution are not very encouraging to give a huge rise in the emoluments of these employees. Besides, if something is given to these Class IV employees, the other class of employees will naturally urge for similar relief and they are quite a good number, numbering as many as 118. Considering all these circumstances, therefore, I order that each of the Class IV employees involved in this Reference will be entitled to a Dearness Allowance of Rs. 25 and a House Rent Allowance of Rs. 10 per month, with effect from the date of the demand, which is 27th April 1965.

16. In the result, I pass an award holding that the categories of workers named in the Reference are each entitled to an allowance of Rs. 35 per month in addition to the salaries and increments which are now being paid to them.

17. Under the circumstance of the case, each party will bear its own costs.

A. PANCHAKSHARIAH,

*Presiding Officer,
Industrial Tribunal,*

20-3-1967.

ORDER

Bangalore, dated 6th April 1967.

S. O. 630.—WHEREAS by State Government Order No. LMA 602 LLD 65, dated 15th February 1966 the Industrial Dispute between the Workmen and the Management of Mary Calvert Holdsworth Memorial Hospital, Mission Hospital Road, Mysore, was referred to the Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 602 LLD 65]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,

*Under Secretary to Government,
Labour and Municipal Administration Department.*